

## PLAINTIFF'S COMPLAINT

**PARTIES**

5. Plaintiff is a natural person residing in Johnsonburg, Pennsylvania 15845.

6. Plaintiff is a “consumer” as that term is defined in 15 U.S.C. §1692a(3).

7. Defendant is a debt collection company with its principal office located at 6 Interplex Drive, Suite 209, Feasterville-Trevose, Pennsylvania 19053.

8. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6) and sought to collect a consumer debt from Plaintiff.

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

**FACTUAL ALLEGATIONS**

10. At all pertinent times hereto, Defendant was hired to collect a consumer debt and contacted Plaintiff in its attempts to collect that debt.

11. The alleged debt, a Lowe’s/GE Capital Retail Bank credit card account, arose out of transactions that were primarily for personal, family, or household purposes.

12. As Plaintiff does not owe any business debt, any debt that Defendant was attempting to collect could only be personal in nature.

13. On or about July 10, 2013, Defendant mailed Plaintiff a letter demanding payment of \$1,201.70 for an alleged consumer debt. See Exhibit A, Defendant’s July 10, 2013, letter to Plaintiff.

14. The letter was written on Defendant’s law firm’s letterhead with “Business and Trial Lawyers” appearing at the top. See Exhibit A.

15. The letter was signed “DAVID K. BIFULCO, ESQ.” See Exhibit A.

16. Plaintiff understood that Mr. Bifulco had reviewed the collection account and had

1 approved the sending of the letter. See Exhibit A.

2 17. The letter did not disclaim attorney review.

3 18. In the subject letter, Defendant stated, “My client has determined that your  
4 account may be suitable for litigation with a licensed attorney in your jurisdiction.” See Exhibit  
5 A.

6 19. Defendant claimed, “it is essential that [Plaintiff] contact [its] office to discuss  
7 making arrangements to resolve this matter voluntarily.” See Exhibit A.

8 20. Mr. Bilfulco threatened, “if an amicable resolution cannot be reached, I will have  
9 no other alternative but to advise my client to take further legal action with a licensed attorney in  
10 the jurisdiction where you reside.” See Exhibit A.

11 21. Mr. Bilfulco is a licensed attorney in the Commonwealth of Pennsylvania.

12 22. Therefore, his statements to advise his client to take further legal action with a  
13 licensed attorney in the jurisdiction where Plaintiff resides were misleading and deceptive, as his  
14 client had already placed the account with a licensed attorney in the jurisdiction where Plaintiff  
15 resided.

16 23. Furthermore, the July 10, 2013, letter was Defendant’s initial communication  
17 with Plaintiff. See Exhibit A.

18 24. Although Defendant included the statutory debt validation notice in the letter; the  
19 notice was not conveyed effectively to Plaintiff. See Exhibit A.

20 25. The validation notice was overshadowed and/or contradicted by accompanying  
21 messages from Defendant, and as a result, made Plaintiff uncertain of his rights. See Exhibit A.

22 26. Here, Defendant claimed that it was “essential” for Plaintiff to contact them to  
23 voluntarily resolve this matter or “*further* legal action would be taken,” implying that legal  
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1 action had already been taken. See Exhibit A.

2 27. From the perspective of the least sophisticated consumer, including Plaintiff, the  
3 indication that “further legal action would be taken” would indicate that the validity of the debt  
4 had already been decided.

5 28. The notice, however, informs Plaintiff that he has thirty days after receipt of this  
6 notice to dispute the validity of the debt. See Exhibit A.

7 29. Upon reading this notice, the least sophisticated consumer, like Plaintiff, might  
8 wonder what purpose lodging a dispute would serve if legal proceedings had already been  
9 instituted or further legal proceedings would be instituted if he did not pay the debt.

10 30. The juxtaposition of Plaintiff’s statutory rights with an indication that legal  
11 proceedings had been instituted (or that further legal proceedings would be instituted if the  
12 matter was not voluntarily resolved) made the least sophisticated consumer, including Plaintiff,  
13 uncertain as to his rights.

14 31. Additionally, upon information and belief, and not known to Plaintiff at the time  
15 he received Defendant’s letter, Defendant had not taken legal action against him.

16 32. Therefore, Defendant’s statement that it would take “further legal action” against  
17 him, which implied that some type of legal action had already been taken, was false and  
18 deceptive, as no legal action had been taken.

19 33. Then, on or about August 23, 2013, Defendant mailed Plaintiff a letter  
20 demanding payment of \$1,201.70 for an alleged consumer debt. See Exhibit B, Defendant’s  
21 August 23, 2013, letter to Plaintiff.

22 34. Defendant’s August 23, 2013, letter appears to be the same as its July 10, 2013,  
23 with the exception of the date on the letter. Compare Exhibit A and Exhibit B.

1           35.     The August 23, 2013, letter was written on Defendant's law firm's letterhead  
2 with "Business and Trial Lawyers" appearing at the top. See Exhibit B.

3           36.     The letter was signed "DAVID K. BIFULCO, ESQ." See Exhibit B.

4           37.     The letter did not disclaim attorney review; accordingly, Plaintiff understood that  
5 Mr. Bifulco had reviewed the collection account and had approved the sending of the letter. See  
6 Exhibit B.

7           38.     In its letter, Defendant stated, "My client has determined that your account may  
8 be suitable for litigation with a licensed attorney in your jurisdiction." See Exhibit B.

9           39.     Defendant claimed, "it is essential that [Plaintiff] contact [its] office to discuss  
10 making arrangements to resolve this matter voluntarily." See Exhibit B.

11           40.     Mr. Bilfulco threatened, "if an amicable resolution cannot be reached, I will have  
12 no other alternative but to advise my client to take further legal action with a licensed attorney in  
13 the jurisdiction where you reside." See Exhibit B.

14           41.     Mr. Bilfulco is a licensed attorney in the Commonwealth of Pennsylvania.

15           42.     Therefore, again, his statements to advise his client to take further legal action  
16 with a licensed attorney in the jurisdiction where Plaintiff resides were misleading and  
17 deceptive, as his client had already placed the account with a licensed attorney in the jurisdiction  
18 where Plaintiff resides.

19           43.     Furthermore, the August 23, 2013, letter was Defendant's second communication  
20 with Plaintiff, although the letter was written to suggest it was Defendant's initial  
21 communication with him.

22           44.     The August 23, 2013, letter included the statutory debt validation notice in the  
23 letter; and again, the notice was not conveyed effectively to Plaintiff. See Exhibit B.  
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1 45. Rather, the validation notice was overshadowed and/or contradicted by  
2 accompanying messages from Defendant, and as a result, made Plaintiff uncertain of his rights.  
3 See Exhibit B.

4 46. Defendant claimed that it was “essential” for Plaintiff to contact them to  
5 voluntarily resolve this matter or “*further* legal action would be taken,” implying that some type  
6 of legal action had already been taken. See Exhibit B.

7 47. From the perspective of the least sophisticated consumer, including Plaintiff, the  
8 indication that “further legal action would be taken” would indicate that the validity of the debt  
9 had already been decided.

10 48. The notice, however, informs Plaintiff that he has thirty days after receipt of this  
11 notice to dispute the validity of the debt. See Exhibit B.

12 49. Upon reading this notice, the least sophisticated consumer, like Plaintiff, might  
13 wonder what purpose lodging a dispute would serve if legal proceedings had already been  
14 instituted or further legal proceedings would be instituted if he did not pay the debt.

15 50. The juxtaposition of Plaintiff’s statutory rights with an indication that legal  
16 proceedings had been instituted (or that further legal proceedings would be instituted if the  
17 matter was not voluntarily resolved) made the least sophisticated consumer, including Plaintiff,  
18 uncertain as to his rights.

19 51. Additionally, upon information and belief, and not known to Plaintiff at the time  
20 he received Defendant’s letter, Defendant had not taken legal action against him.

21 52. Therefore, Defendant’s statement that it would take “further legal action” against  
22 him was false and deceptive, as no legal action had been taken and it did not intend to take legal  
23 action against him, as almost one year later, neither Defendant nor the creditor has taken the  
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1 threatened legal action.

2 **DEFENDANT VIOLATED THE**  
3 **FAIR DEBT COLLECTION PRACTICES ACT**

4 **COUNT I**

5 53. Defendant's conduct, as detailed in the preceding paragraphs, violated 15 U.S.C.  
6 §§ 1692e, 1692e(5) and 1692e(10).

7 a. A debt collector violates § 1692e of the FDCPA by using false, deceptive  
8 or misleading representations or means in connection with the collection  
9 of any debt.

10 b. A debt collector violates § 1692e(5) of the FDCPA by threatening to take  
11 any action that cannot legally be taken or that is not intended to be taken.

12 c. Section 1692e(10) of the FDCPA prohibits debt collectors from using any  
13 false representations or deceptive means to collect or attempt to collect  
14 any debt or to obtain information concerning a consumer.

15 d. Here, Defendant violated §§ 1692e, 1692e(5), and 1692e(10) of the  
16 FDCPA by falsely implying legal action had been filed against Plaintiff,  
17 when no legal action had been filed; threatening to file further legal action  
18 against Plaintiff when it did not intend to; threatening to take legal action  
19 against Plaintiff when it did not intend to; and falsely claiming the case  
20 would be referred to a licensed attorney in Plaintiff's jurisdiction when  
21 Mr. Bifulco was a licensed attorney in Plaintiff's jurisdiction.  
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23 **COUNT II**

24 54. Defendant's conduct, as detailed in the preceding paragraphs, violated 15 U.S.C.  
25 § 1692f.

1 a. A debt collector violates § 1692f of the FDCPA by using unfair or  
2 unconscionable means to collect or attempt to collect any debt.

3 b. Here, Defendant violated § 1692f of the FDCPA engaging in other unfair  
4 and unconscionable debt collection practices, including claiming a false  
5 urgency for Plaintiff to contact them as well as sending multiple collection  
6 letters which were written to give the impression that each letter was  
7 Defendant's initial communication with Plaintiff.  
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9 **COUNT III**

10 55. Defendant's conduct, as detailed in the preceding paragraphs, violated 15 U.S.C.  
11 § 1692g(a).

12 a. A debt collector violates § 1692g(a) of the FDCPA by failing to send to  
13 the consumer, within five days after its initial communication with a  
14 consumer in connection with the collection of a debt, a written notice  
15 containing: (1) the amount of the debt; (2) the name of the creditor to  
16 whom the debt is owed; (3) a statement that unless the consumer, within  
17 thirty days after receipt of the notice, disputes the validity of the debt, or  
18 any portion thereof, the debt will be assumed to be valid by the debt  
19 collector; (4) a statement that if the consumer notifies the debt collector in  
20 writing within the thirty-day period that the debt, or any portion thereof, is  
21 disputed, the debt collector will obtain verification of the debt or a copy of  
22 a judgment against the consumer and a copy of such verification or  
23 judgment will be mailed to the consumer by the debt collector; and (5) a  
24 statement that, upon the consumer's written request within the thirty-day  
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1 period, the debt collector will provide the consumer with the name and  
2 address of the original creditor, if different from the current creditor.

- 3 b. Here, Defendant violated § 1692g(a) of the FDCPA by failing to send  
4 Plaintiff written notification that effectively conveyed his rights to dispute  
5 the debt and/or request validation of the debt.

6 WHEREFORE, Plaintiff, JUSTIN PARANA, respectfully prays for a judgment as  
7 follows:  
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- 9 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);  
10 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant  
11 to 15 U.S.C. § 1692k(a)(2)(A);  
12 c. All reasonable attorneys' fees, witness fees, court costs and other litigation  
13 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and  
14 d. Any other relief deemed appropriate by this Honorable Court.

15 **DEMAND FOR JURY TRIAL**

16 PLEASE TAKE NOTICE that Plaintiff, JUSTIN PARANA, demands a jury trial in this  
17 case.

18 RESPECTFULLY SUBMITTED,

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20 Date: July 9, 2014

21 By: /s/ Craig Thor Kimmel  
22 CRAIG THOR KIMMEL  
23 Attorney ID No. 57100  
24 Kimmel & Silverman, P.C.  
25 30 E. Butler Pike  
Ambler, PA 19002  
Phone: (215) 540-8888  
Fax: (877) 788-2864  
Email: [kimmel@creditlaw.com](mailto:kimmel@creditlaw.com)